IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

MFA.No. 1210 of 2001(A)

OPMV.434/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA
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APPELLANT: PETITIONER

THOMAS, S/O.ABRAHAM,
KALAPPARAMBIL HOUSE,
NERIAMANGALAM KARA,
NERIAMANGALAM VILLAGE.

BY ADV. SRI.K.J.KURIACHAN
SMT.STELLA.P.P.

RESPONDENTS: RESPONDENTS:
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1. SONY.K., GEORGE S/O.GEORGE,
KARIMPANACKAL (H), KOTHAMANGALAM VILLAGE.

2. SONY.K.GEORGE, S/O.GEORGE
KARIMPANACKAL HOUSE,
PIRAKUNNAM KARA, KUTTAMANGALAM VILLAGE.

3. THE ORIENTAL INSURANCE CO. LTD.
REP. BY ITS BRANCH MANAGER,
KOTHAMANGALAM.

BY ADV. SC ORIENTAL INSURANCE CO LTD
SRI.M.JACOB MURICKAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 18/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No.1210 of 2001

Dated this the 18th August, 2007.

J U D G M E N T

The claimant in O.P.(M.V.) No.434/1998, on the file of the Motor Accidents Claims Tribunal, Muvattupuzha, is the appellant. Appellant filed Original Petition claiming compensation against respondents alleging that he met with a road traffic accident and sustained injuries at about 8.10 p.m. on 22.11.1996. He claimed an amount of Rupees One Lakh as compensation. Respondents 1 and 2 remained ex parte. The 3rd respondent, Insurer, alone contested the matter. The 3rd respondent filed a written statement contending that appellant sustained injuries not in a motor vehicle accident. It was contented that the police registered a case on a complaint forwarded through the Magistrate Court, two weeks after the incident. The averment that motor cycle bearing Registration No.KL-7-A-505, hit on the appellant and sustained injuries was denied. The quantum of compensation claimed was also disputed. The Tribunal though found that if the accident was proved, the appellant was entitled to get a

compensation of Rs.38,000/=, but dismissed the petition, holding that the appellant failed to prove that he sustained injuries in a motor vehicle accident. Challenging that award, this appeal is filed.

2. The learned counsel appearing for the appellant has argued before me that the reasons stated by the Tribunal for rejecting the evidence adduced by the appellant is not legal and proper. It is argued that the evidence on record clearly prove that appellant sustained injuries in a road traffic accident. The incident was alleged to have taken place at 8.10 p.m. on 22.11.1996. He was taken to the hospital. At the time of admission, neither the appellant nor the persons who took him to the hospital had a case that he sustained injuries in a motor vehicle accident. The explanation offered by the appellant was that he was taken to the hospital by the rider of the motor cycle and PW.2. The rider of the motor cycle agreed to meet the expenses for treatment. But subsequently, he changed his mind and stated that he will not bear the expenses on the next day. So, on the next day, brother-in-law of the appellant met the doctor. According to the appellant, the doctor informed him that since at the time of admission, it was not recorded as a medico legal case, it was not possible for the hospital to inform the case to police. The appellant as

PW.2 had deposed that his brother-in-law went to the police station and informed the Station House Officer about the accident. But they did not register a case. So a complaint was filed on 5.12.1996, which was forwarded to the police by the learned Magistrate. The Tribunal did not accept that explanation.

3. The appellant examined two witnesses also. PW.2 is his own brother-in-law. PW.3 is stated to an independent witness. PW.3 had admitted that he is a friend of the appellant and he knows the rider of the motor vehicle also. For the reasons best known to the appellant, he did not examine the doctor who treated him. It is to be noted that in the treatment certificate issued, the Doctor has referred to only the fracture sustained by the petitioner. There is no reference to any other injury. The learned counsel appearing for the appellant submitted that in the treatment certificate only fractures are noted. It is argued that the case sheet produced and marked as Ext.X1 would show that appellant sustained injuries on various parts, which itself is sufficient to show that he sustained multiple lacerations on account of a road traffic accident. The doctor who treated the patient was not examined, instead of that, another doctor was examined. He admitted that he had no direct knowledge regarding the injury sustained by the

appellant and he knows the history of the case only from Ext.X1. I am of the view that it is only just and proper to give another opportunity to the parties to adduce further evidence. For that purpose, the case has to go back.

4. In the result, the appeal is allowed. The impugned order is set aside. O.P.(M.V.) No.434/1998 is remanded to the Motor Accidents Claims Tribunal, Muvattupuzha, for fresh disposal in accordance with law, after giving reasonable opportunity to both sides to adduce further evidence.

Parties shall appear before the Tribunal on 29.9.2007.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No. 1210/2001

J U D G M E N T

Dated:18th August, 2007.